

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/870,614 Confirmation No. 1779
Applicant: Scott J. Broussard
Title: Dynamic Buffering of Graphic Images by a Platform Independent
Application Program Interface
Filed : May 31, 2001
TC/A.U. : 2173
Examiner : Dennis G. Bonshock
Docket No. : AUS920010265US1
Customer No. : 48,916

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SUPPLEMENT TO APPEAL BRIEF FILED 03-05-2010

Dear Sir:

In response to the Notification of a Non-Compliant Appeal Brief dated March 23, 2010 (paper no. 20100323-1), please substitute the following **RELATED PROCEEDINGS APPENDIX** for the one filed on March 5, 2010:

Respectfully submitted,

Date: March 30, 2010

/Gregory K. Goshorn/

By: Gregory K. Goshorn

Reg. No.: 44,721

ATTORNEY FOR APPLICANT

Greg Goshorn, P.C.

9600 Escarpment

Suite 745-9

Austin, Texas 78749

Telephone: (512) 291-9203

Facsimile: (512) 535-4206

RELATED PROCEEDINGS APPENDIX

The following appendix includes copies of Decisions of the BPAI and the courts in related proceedings. Decisions include:

BPAI Decision – Examiner Reversed 03/31/2008 Appeal (No. 2007-3520);

BPAI Decision – Examiner Affirmed in Part 11/24/2008 (Appeal No. 2008-2534);

BPAI Decision – Examiner Affirmed in Part 03/31/2008 (Appeal No. 2008-0155);

BPAI Decision – Examiner Reversed 03/31/2008 (Appeal No. 2007-2696);

BPAI Decision – Examiner Reversed 03/31/2008 (Appeal No. 2008-0098); and

BPAI Decision – Examiner Affirmed in Part 03/31/2008 (Appeal No. 2008-0463).

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SCOTT J. BROUSSARD

Appeal 2007-3520
Application 09/870,614
Technology Center 2100

Decided: March 31, 2008

Before JAMES D. THOMAS, JOSEPH L. DIXON, and
LANCE LEONARD BARRY, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-22. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

BACKGROUND

Appellant's invention relates to dynamic buffering of graphic images by a platform independent application program interface. The present invention remedies select situations in the Swing interface which remedies situations in the Abstract Windowing Toolkit of Java (Spec. 1). The graphical representation of the object may, in some cases, be temporarily stored within a display buffer (e.g., memory 18 or processor 12 of Fig. 1) before the graphical representation is forwarded to a display device (display 16, Fig. 1). As described in more detail below, the Appellant's claimed invention more specifically relates to a system and method for enabling/disabling buffering of the graphical representation (Spec. 34:12 - 35:25, and Abstract). (Br. 3). An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A display system, comprising:

a display;

a display buffer coupled to the display; and

a processor adapted to execute an application program which, when executed, produces images upon the display, wherein during a first mode the images are forwarded in sequence to the display, and wherein during a second mode the images are compiled as a combination image of at least one of said image drawn over at least another of said images and presented to the buffer before being forwarded to the display.

PRIOR ART

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

DiNicola 4,951,229 Aug. 21, 1990

Sun Microsystems, Mixing Heavy and Light Components, 2/1998, Volume 3, No. 4, SWING Version 1.0, (hereinafter referred to as Fowler.)

Sun Microsystems, Introducing SWING, 2/98, Volume 3, No. 4, SWING Version 1.0. (hereinafter referred to as SUN).

REJECTIONS

Claims 1, 2, 5, and 6 stand rejected under 35 U.S.C. §102(b) as being anticipated by DiNicola.

Claims 3, 4, and 7-10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over DiNicola and Fowler.

Claims 11-13, 18, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over DiNicola and Sun.

Claims 14-17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over DiNicola, Fowler, and Sun.

Claims 20-22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over DiNicola.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and Appellant regarding the above-noted rejections, we make reference to the Examiner's Answer (mailed March 23, 2007) for the

reasoning in support of the rejections, and to Appellant's Brief (filed November 15, 2006) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to Appellant's Specification and claims, to the applied prior art references, and to the respective positions articulated by Appellant and the Examiner. As a consequence of our review, we make the determinations that follow.

35 U.S.C. § 102

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim. We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The properly interpreted claim must then be compared with the prior art.

"It is well settled that a prior art reference may anticipate when the claim limitations not expressly found in that reference are nonetheless inherent in it. . . . Under the principles of inherency, if the prior art necessarily functions in accordance with, or includes, the claimed limitations, it anticipates." *In re Cruciferous Sprout Litig.*, 301 F.3d 1343,

1349 (Fed. Cir. 2002) (citations and internal quotation marks omitted). "Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (citations and internal quotation marks omitted).

"[A] prima facie case of anticipation [may be] based on inherency." *In re King*, 801 F.2d 1324, 1327 (Fed. Cir. 1986). Once a prima facie case of anticipation has been established, the burden shifts to the Appellant to prove that the prior art product does not necessarily or inherently possess the characteristics of the claimed product. *In re Best*, 562 F.2d 1252, 1255 (CCPA 1977) ("Where, as here, the claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes, the PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his claimed product."). See also *In re Spada*, 911 F.2d 705, 708 (Fed. Cir. 1990).

With respect to independent claim 1, Appellant argues that the conventional Swing-based API's default to buffering their graphical output and that in some cases the default buffering of Swing images may lead to sub-optimal performance. Appellant argues that the invention as recited in independent claim 1 improves the performance of conventional Swing-based API's by providing a display system, which is uniquely configured for enabling/disabling image buffering before the images are sent to the display.

Appellant argues that if buffering is disabled, the images are forwarded in sequence to the display (during a first mode) and if buffering is enabled, at least two of the images may be compiled as a combination image. The combination image may then be presented to the display buffer before it is forwarded to the display (during a second mode) (Br. 7-8).

Appellant distinguishes the teachings of the DiNicola reference and argues that DiNicola fails to anticipate a display system as claimed in independent claim 1 since DiNicola fails to provide any teaching or suggestion for a display system including a display, a display buffer, and a processor which is adapted to produce images upon a display, such that during a second mode at least two images are compiled as a combination image and presented to the display buffer before the combination image is forwarded to the display (Br. 7-8). Appellant distinguishes the Examiner's reliance upon column 3 of DiNicola and in figure 1 of DiNicola since DiNicola's image mixing process is performed downstream of the memory buffers 24, 26, 28, and 30, and the merged images are passed through the color translation table 34 which generates the appropriate control signals to be passed on data line 40 to the display monitor 50 as described in column 4 of DiNicola. Appellant maintains that DiNicola clearly states that the combined image (mixed images) are passed directly to the display monitor, and DiNicola does not teach or suggest that the combined images may be stored within the memory buffers 24, 26, 28, and 30 or within any other memory buffer before the combined images are forwarded to the display monitor (Br. 8).

From our review of the teachings of the DiNicola reference, we agree with Appellant that DiNicola does not expressly teach nor inherently buffer the mixed image before forwarding the mixed image to the display. The Examiner maintains at page 20 of the Answer that independent claim 1 only states that images are presented to a buffer before being forwarded to the display and not necessarily that the composite display image may be stored in memory buffers. We disagree with the Examiner's interpretation of independent claim 1 because the limitation concerning the combination image is the one expressly recited as being buffered before being forwarded to the display. Therefore, we find that the Examiner's claim interpretation to be unreasonable in light of the express limitations of independent claim 1.

With respect to Appellant's argument concerning the teaching in DiNicola of the "intentional absence of an intermediate frame buffer" at page 10 of the Brief, the Examiner contends that the contemplation in the text of DiNicola concerning an intermediate frame buffer existing is "sufficient enough to assert that a buffer can be located at this post compilation location." (Ans. 21). Here, the Examiner speculates as to an undisclosed alternative embodiment which may or may not be desirable from the teachings of DiNicola. This speculation is inappropriate under a rejection based upon anticipation wherein the post compilation buffer is neither disclosed nor inherently present in DiNicola. Therefore, the element is lacking within the four corners of the teaching, and we make no findings regarding the obviousness of this feature since the Examiner rejected independent claim 1 based solely upon anticipation. Therefore, we cannot

sustain the Examiner's rejection based upon anticipation of independent claim 1 and dependent claim 2.

With respect to independent claim 5, the Examiner relies upon the teachings of DiNicola at columns 3 and 5 to teach the use of an intermediate buffer that is not required, as a matter of asserted efficiency, but mentioned in the reference (Ans. 5). Again, the Examiner's reliance upon buffers 24, 26, 28, and 30 is misplaced since these upstream buffers are not taught or suggested to buffer the composite display image as expressly disclosed by DiNicola. Therefore, we cannot agree with the Examiner's conclusion that DiNicola anticipates independent claim 5 and dependent claim 6.

35 U.S.C. § 103

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). "[T]he Examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability." *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore, "there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness' . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court

can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007)(quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

With respect to independent claims 12 and 19, we find that each claim to be slightly different in scope than independent claim 5 wherein independent claims 12 and 19 do not expressly set forth a combination image but rather recite creating a graphical representation and enabling or disabling buffering of that created graphical representation. Appellant argues that DiNicola does not teach or suggest that memory buffers 24, 26, 28, and 30 could be disabled in certain circumstances, and since no other memory buffers are disclosed by DiNicola, then DiNicola cannot be relied upon to teach or suggest the presently claimed enabling/disabling the buffering of the graphical representation of an object (Br. 18). We agree with Appellant’s argument. In addition, we do not find that memory buffers 24, 26, 28, and 30 can reasonably be interpreted as the enabled buffers since the graphical representation is not created until it is mixed in DiNicola. Nor do we find that the teachings of Sun remedy this deficiency in DiNicola. Therefore, we do not find that the Examiner has set forth a sufficient initial showing of obviousness of independent claims 12 and 19 and their respective dependent claims under 35 U.S.C. § 103.

CONCLUSION

To summarize, we have reversed the rejection of claims 1, 2, 5, and 6 under 35 U.S.C. § 102, and we have reversed the rejection of claims 3, 4, and 7-22 under 35 U.S.C. § 103(a).

REVERSED

clj

DAFFER MCDANIEL LLP
P.O. BOX 684908
AUSTIN, TX 78768

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SCOTT J. BROUSSARD

Appeal 2008-2534
Application 09/870,613
Technology Center 2100

Decided: November 21, 2008

Before JAMES D. THOMAS, JOSEPH L. DIXON, and
LANCE LEONARD BARRY, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-4, 8, 10-12, 14, and 17-20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

THE INVENTION

Appellant's invented a system and method for reducing memory use associated with the graphical representation of a list control. (Spec. 1). An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A display system, comprising:

a display;

a platform-independent application program containing invocations of platform-dependent display routines to create a display image when operating on a processor having an operating system;

a memory;

a platform-independent software component for fetching list data from the memory for producing a display image of the list data upon the display without invoking a platform-dependent display routine; and

a platform-independent peer component coupled between the platform-independent software component and the platform-independent application program, for intercepting said invocation of platform-dependent display routines and for routing the intercepted invocations to said platform-independent software component.

PRIOR ART

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

Fulfs	US 5,327,529	July 5, 1994
Nason	US 6,727,918 B1	April 27, 2004
		(filed Nov. 28, 2000)

REJECTIONS

Claims 1-4, 8, 10-12, 14, and 17-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nason and Fufts.

Rather than reiterate the conflicting viewpoints of the Examiner and Appellant regarding the above-noted rejection, we refer to the Examiner's Answer (mailed Aug. 28, 2007) for the reasoning in support of the rejections, and to Appellant's Brief (filed May 22, 2007) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have carefully considered Appellant's Specification and claims, the applied prior art references, and the respective positions articulated by Appellant and the Examiner. As a consequence of our review, we determine the following.

PRINCIPLES OF LAW

35 U.S.C. § 103(a)

Section 103 forbids issuance of a patent when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains."

KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1734 (2007).

In *KSR*, the Supreme Court emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art," *Id.* at 1739, and discussed circumstances in which a patent might be

determined to be obvious. *KSR*, 127 S. Ct. at 1739 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966)). The Court reaffirmed principles based on its precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* The operative question in this "functional approach" is thus "whether the improvement is more than the predictable use of prior art elements according to their established functions." *Id.* at 1740.

The Federal Circuit recently recognized that "[a]n obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not." *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007) (citing *KSR*, 127 S. Ct. 1727, 1739 (2007)). The Federal Circuit relied in part on the fact that Leapfrog had presented no evidence that the inclusion of a reader in the combined device was "uniquely challenging or difficult for one of ordinary skill in the art" or "represented an unobvious step over the prior art." *Id.* at 1162 (citing *KSR*, 127 S. Ct. at 1740-41).

One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

ANALYSIS

Appellant argues that the teachings of Nason and Fults do not teach the last two limitations of independent claim 1 concerning a platform-independent software component fetching a list without invoking platform

dependent display routines and that a peer component for intercepting the platform dependent and display routine and routing the intercepted invocations to platform-independent software component. (App. Br. 4-9).

We disagree with Appellant and find that the Examiner's responsive arguments at pages 8-13 of the Answer clearly show that the combination of teachings would have fairly suggested the invention as set forth in independent claim 1. Furthermore, we find that the teachings of Nason at Columu 6, lines 20-37, teaches or fairly suggests that the complementary interface may include buttons, menus, and controls. We find that disclosed menus are a form of list and that the teachings of Fufts similarly teaches windows, menus, buttons, scrolling lists, document control, and list selection in the generic user interface object. Therefore, we find the two teachings to reinforce that menus and lists were desirable and according to the teachings of Nason, meant for a parallel graphical user interface as taught to "operate independently of the native operating system" and "independent of the desktop and the native operating system." (Col. 4, l. 62-col. 5, l. 4).

Additionally, the Examiner cites Nason to evidence that:

In one embodiment, the alternative display content controller provides an API that intercepts and routes all of the calls to a graphics device interface (GDI) invoked by an application to communicate with the display. For example, in the Windows™ environment, the alternate display content controller intercepts all function calls to the GDI application programming interface (API). The controller determines, based upon the coordinates of the window being written to, whether the call should be forwarded to a display driver that can output to an overscan area (a complementary GUI display driver), or whether the call should be forwarded to the native graphics device interface. One skilled in the art will recognize that other combinations are possible, such as part processing of the request by the complementary GUI

display driver before forwarding the request to the native graphics display driver.

(Nason Col. 20, l. 65-col. 21, l. 13).

Here, we find sufficient suggestion of a "peer" to intercept routine calls from a platform-dependent routine and route them to a platform independent routine. With respect to Appellant's argument that the Examiner admits that Nason does not specifically disclose a "peer" component that is list related (App. Br. 6), we find that menus disclosed by Nason would have fairly suggested "lists" wherein menus may be in the form of "lists" as further evidenced by the teachings of Fults, as discussed above. Therefore, we find Appellant's argument to be unpersuasive of error in the Examiner's initial showing of obviousness.

Our review of Appellant's arguments at pages 4-9 of the Appeal Brief to individually address the merits of each of the individual teachings, but does not show error in the Examiner's initial showing of the obviousness of the invention is recited in independent claims 1 and 17 and their respective dependent claims 2-4, 8, 10, 11, and 18-20. Therefore, we will sustain the Examiner's rejection of independent claims 1 and 17 and their respective dependent claims 2-4, 8, 10, 11, and 18-20.

With respect to independent claim 12, Appellant relies upon the same arguments advanced with respect to independent claims 1 and 17 above which we found unpersuasive of error. (App. Br. 10). We find those arguments unpersuasive with respect to independent claim 12. Appellant further argues that the Examiner's reliance upon Java does not provide sufficient motivation for one of ordinary skill in the art to reasonably conclude that the system of Nason necessarily includes a first platform-

independent software component ... for generating a display list image without creating a copy of list data stored by the platform-independent application program. (App. Br. 11). From our review of the Examiner's Answer and responsive arguments, we find that the Examiner has not clearly addressed the limitation "without creating a copy of list data stored by a platform-independent application program." Therefore, we find that the Examiner has not set forth a sufficient initial showing of obviousness of independent claim 12 and dependent claim 14.

CONCLUSION

In summary, we have sustained the rejection of claims 1-4, 8, 10, 11, and 17-20 under 35 U.S.C. § 103(a), and we have reversed the rejection of claims 12 and 14 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED-IN-PART

rwk

DAFFER MCDANIEL LLP
P.O. BOX 684908
AUSTIN, TX 78768

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SCOTT J. BROUSSARD

Appeal 2008-0155
Application 09/870,620
Technology Center 2100

Decided: March 31, 2008

Before JAMES D. THOMAS, JOSEPH L. DIXON, and
LANCE LEONARD BARRY, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-16. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

BACKGROUND

Appellant's invention relates to a system and method for fast drawing of text fields and labels using a Java Swing application program interface. The present invention remedies select situations in the Swing interface which remedies situations in the Abstract Windowing Toolkit of Java. Appellant's claimed subject matter includes a computer-readable memory medium comprising an application program running under an operating system, a first software component and a second software component. (Spec., 13, ll. 10-13; 16, ll. 25-30; 17, ll. 1-2; FIG. 1, reference number 18). The first software component (e.g., the JTextField component and/or the JLabel component) is generally adapted to create a graphical representation of an object (e.g., a graphical representation of TextField 122 and/or Label 120, FIG. 13), which is embodied as code within the software component. Although the code comprises text and other displayable content, the first software component may be invoked during runtime by the application program to define visual attributes of the text, but not to draw the text. (Spec., 32, ll. 14-18). Instead, the second software component (e.g., the JTextFieldPeer component and/or the JFastLabelPeer component) may be invoked to draw the text using the visual attributes defined by the first software component. (Spec., 32, ll. 18-28). (Corrected Supplemental Br. 2; Summary of the Claimed Invention).

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A computer-readable memory medium, comprising:

a first software component adapted to create a graphical representation of an object embodied as code within the software component, wherein the code comprises text and other displayable content;

an application program running under an operating system; and

a second software component adapted for drawing the text, wherein the first software component is invoked during runtime by the application program to define visual attributes of the text, but not to draw the text, and wherein the second software component is invoked to draw the text using the visual attributes.

PRIOR ART

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

Guha

US 6,005,588

December 21, 1999

Nelson, Matthew T., Java Foundation Classes, McGraw-Hill, xxv-xxvii, 20-22, 43, 73-79, 472-481, 694-707, (1998).

REJECTIONS

Claims 1, 3-10, and 12-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nelson. Claims 2 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nelson in view of Guha.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and Appellant regarding the above-noted rejection, we make reference to the Examiner's Answer (mailed Apr. 6, 2007) for the reasoning

in support of the rejections, and to Appellant's Brief (filed Nov. 22, 2006) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to Appellant's Specification and claims, to the applied prior art references, and to the respective positions articulated by Appellant and the Examiner. As a consequence of our review, we make the determinations that follow.

35 U.S.C. § 103

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). "[T]he Examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability." *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore, "'there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness' . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of

ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007)(quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

With respect to independent claims 1, 8, and 16, we find that the Examiner has set forth a sufficient initial showing in the Answer at pages 3-22, and the Examiner has clearly set forth the respective teachings of Nelson which correspond to the first software components and the second software components. The Examiner relies upon page 78 of Nelson wherein UI class (the second software component) having separate groups of code to get the look-and-feel and to draw the text. The UI class does not know what the text control contains or what the contents should look like, but uses `getDocument()` or `getStyledDocument()` methods (which are the first software component) for this function. (Ans. 11).

We agree with the Examiner’s correlation of the teachings of Nelson to the recited claim limitations and find that the Examiner has clearly set forth a sufficient initial showing of obviousness. Therefore, we look to the Appellant’s arguments to show error in the Examiner’s initial showing.

In the Brief at page 5, paragraph 2, Appellant restates the Examiner’s application of the teachings of Nelson to independent claim 1, but then paraphrases the correlation of the first software component and the second software component in reverse order. Thereafter, Appellant argues that the `getDocument()` and `getStyledDocument()` methods do not actually draw text and cannot be considered equivalent to the presently claimed second software component. (Br. 5). Since the Examiner has correlated the

getDocument() and getStyledDocument() methods as the first software component, we do not find Appellant's argument relevant or persuasive concerning the first software component since Appellant has not addressed the prior art teachings as applied by the Examiner. Therefore, Appellant's argument is not persuasive of error in the Examiner's initial showing of obviousness.

Furthermore, Appellant argues that the UI class of Nelson is responsible for drawing text, UI class cannot be considered equivalent to the presently claimed first software component. Since the Examiner has correlated the UI class as the second software component, we do not find Appellant's argument relevant or persuasive concerning the second software component since Appellant has not addressed the prior or teachings as applied by the Examiner. Therefore, Appellant's argument is not persuasive of error in the Examiner's initial showing of obviousness.

Therefore, we do not find that Appellant has shown error in the initial showing of obviousness as set forth by the Examiner with respect to independent claims 1, 8, and 16, and we will sustain the rejection of independent claims 1, 8, and 16 and their respective dependent claims.

With respect to dependent claim 17, Appellant argues that the Examiner has not set forth a prima facie case of obviousness since the Examiner has not provided a teaching of the present claimed "peer component." (Br. 10). The Examiner maintains at page 7 of the Answer that Nelson teaches "a system for drawing text where one component can define attributes of an item and the actual displaying of the item can be

implemented by another item. It is, however a design choice, an item could just as easily be given attributes and drawn by the same software component.” We do not find that the Examiner’s application or correlation of the teachings of Nelson to specifically address the claim limitations “a peer component adapted for redirecting a memory call to invoke text drawing methods of the second software component rather than text drawing methods of the first software component.” Here, the Examiner’s generalized application of the prior art teachings of Nelson does not set forth a sufficient initial showing of obviousness, and we will reverse the Examiner’s rejection of dependent claim 17 for a lack of proper initial showing.

With respect to dependent claims 2 and 11, Appellant reiterates and relies upon the same arguments advanced with independent claims 1 which we did not find persuasive above. Therefore, we will sustain the rejection of dependent claims 2 and 11.

CONCLUSION

To summarize, we have sustained the rejection of claims 1-16 under 35 U.S.C. § 103(a), and we have reversed the rejection of claim 17 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED-IN-PART

Appeal 2008-0155
Application 09/870,620

rwk

DAFFER MCDANIEL LLP
P.O. BOX 684908
AUSTIN, TX 78768

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SCOTT J. BROUSSARD

Appeal 2007-2696
Application 09/870,621
Technology Center 2100

Decided: March 31, 2008

Before JAMES D. THOMAS, JOSEPH L. DIXON, and
LANCE LEONARD BARRY, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-25. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

BACKGROUND

Appellant's invention relates to combining the functionality of multiple text controls in a graphical user interface (Spec. 1). The present invention remedies select situations in the Swing interface which remedies situations in the Abstract Windowing Toolkit (AWT) of Java.

In a particular aspect of the claimed invention, the system of software components (172, 174 and 176, Fig. 17) provides a unique mode-switching capability, which permits two Swing objects (e.g., the JTextField and JPasswordField components) to alternate as replacements for an AWT object (e.g., the TextField component), depending on the manner in which the AWT object is being used by the application program. In one example, selection between the first and second proxy components may depend on the status of an echo character, which specifies whether entered text should be displayed as masked (e.g., "*****") or unmasked (e.g., "hello") text. (See, Specification -- page 39, lines 10-14). If a legacy application (APP 28, Fig. 1) is using an AWT TextField (170, Fig. 17) without password protection, no echo character is set. This causes the peer component (JTextFieldPeer 172) to select the first proxy component (JTextFieldProxy 174), which creates a new graphics resource component (e.g., a Swing JTextField component) for displaying the AWT TextField object without password protection. (See, Specification -- page 39, lines 14-16). If an echo character

is set, however, the peer component (JTextFieldPeer 172) selects the second proxy component (JPasswordFieldProxy 176), which creates a new graphics resource component (e.g., a Swing JPasswordField component) for displaying the AWT TextField object with password protection. (See, Specification -- page 39, lines 16-19). In either case, the newly created graphics resource component displays the object in a manner, which is independent of the operating system. (See, Specification -- page 39, lines 19-25). (Br. 3-4). An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A system of software components adapted to display an object created by an application program running under an operating system, wherein the system of software components comprises:

a first proxy component;

a second proxy component; and

a peer component for selecting either the first proxy component or the second proxy component, depending on a mode of use of the object, wherein the selection can be made during runtime, and wherein after the proxy component is selected, the selected proxy component dynamically creates a new graphics resource component for displaying the object, such that the appearance of the displayed object is substantially independent of the operating system.

PRIOR ART

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

Fults

US 5,327,529

Jul. 5, 1994

Sun Microsystems, Java Platform 1.2 Beta 4 API Specification: Class JPasswordField and Class JPasswordField, 1993-1998, 1, (hereinafter Java)

Sun Microsystems, The Swing Connection, 2/98, volume 3, no.4, swing version 1.0, (hereinafter Java (specifically IS)).

WinZip Computing Inc., WinZip 8.0, 1991-2000, attached pages, (hereinafter WinZip)

REJECTIONS

Claims 1-25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over WinZip, Java, and Fults. (We note that the Examiner has not applied the Java IS reference against the claims, but does refer to it in some rejections; it has not been considered as part of the rejection).

Rather than reiterate the conflicting viewpoints advanced by the Examiner and Appellant regarding the above-noted rejection, we make reference to the Examiner's Answer (mailed March 7, 2007) for the reasoning in support of the rejections, and to Appellant's Brief (filed November 15, 2006) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to Appellant's Specification and claims, to the applied prior art references, and to the respective positions articulated by Appellant and the

Examiner. As a consequence of our review, we make the determinations that follow.

35 U.S.C. § 103

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). “[T]he Examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore, “‘there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007)(quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

Appellant argues that the present claimed invention provides a unique system of software components that enables an application program (Java application) to be truly portable across all operating systems (OS) platforms by providing various means for maintaining the “look and feel” of the application program. (App. Br. 6). Appellant argues that the Java applications programs utilize a platform-dependent application program

interface (API), commonly known as the Abstract Windowing Toolkit (AWT), to produce what are called heavyweight software components that are written using native code (i.e., instructions specific to the particular Operating System). In that the Look and Feel of a GUI refers to such things as the appearance color in behavior of the interface and there are limitations in the AWT that prohibit true portability of the Java application programs, especially in terms of the Look and Feel of the application programs (App. Br. 6-7).

Appellant argues that the program "Swing" was developed to contain no native code, but unfortunately these lightweight software components cannot completely eliminate the platform dependency of Java applications that use the underlying AWT (App. Br. 7). The present patent application involves the mixing of Swing and AWT components within a given application program interface in an attempt to replace the dual mode, AWT text field components within the lightweight Swing counterpart. (*Id.*) Appellant argues that in order to utilize Swing components, while maintaining behavioral compatibility with the Java application program, the present invention recognizes that the appropriate Swing components must be dynamically re-created and substituted for the AWT components each time the mode of use of the object changes which is in direct contrast to the manner in which Swing components are normally created, which is during the initial construction of the peer components. (*Id.* at 8).

Appellant argues that the presently claimed system of software components provides a unique mode-switching capability that allows two

Swing software components to alternate as replacements for an AWT software component depending on the manner in which the object is being used. (*Id.*). Appellant argues at pages 8-9 of the Brief that the mode switching capability includes a first proxy component, a second proxy component and a peer component and that the proxy components are a set of executable code that when executed translates the method calls from the AWT components to the appropriate Swing components, and translates the event calls from a Swing components to the AWT components containing the Swing component. Appellant argues that the peer component is used for selecting either the first proxy component or the second proxy component, depending on the mode of use of the object. (*Id.*)

Appellant argues the none of the cited art either separately or in combination, provides motivation to teach or suggest a system of software components for selecting, during real time, a first proxy component or a second proxy component for use in displaying an object, where the selection is dependent on a mode of use of the object and where the appearance of the displayed object is substantially independent of the operating system. (*Id.*) Appellant argues, at pages 9-14 of the Brief, the combination of WinZip, Java, and Fults is insufficient to teach or suggest the claimed invention. We generally agree with Appellant's analysis and do not find that the Examiner has made a persuasive initial showing of obviousness under 35 U.S.C. § 103 based upon the combination of WinZip, Java, and Fults.

In the responsive arguments section of the Answer, the Examiner mentions the Java JS reference with respect to independent claim 1, but has

not applied this reference against independent claim 1. Additionally, even if applied, we do not find that the Java IS reference would remedy the deficiencies in the base combination since the operating system independent display is not actually independent of the operating system at all times as noted on page 5 of Java IS reference with a discussion of the Swing interface. Java IS discloses that the Swing interface does not sit atop all AWT components that existed prior to the introduction of Swing. Hence, the Examiner's reliance upon the Java IS reference to teach that Swing is completely independent of the operating system is misplaced.

From our review of these teachings, the Examiner's reliance upon the WinZip reference screen shots to be deficient as to show the process of how the end result was produced. Additionally, the Java reference while teaching Swing components, does not show that the same Look-and-Feel is produced no matter what operating system they are implemented on, as asserted by the Examiner at page 15 of the Answer.

We find the Examiner's rejection to additionally be based upon hindsight reconstruction in an attempt to reconstruct the claimed invention after Appellant has identified a problem which has not been recognized in the prior art applied against the claims. Therefore, we do not find sufficient motivation for the combination of references as maintained by the Examiner in the rejection. Therefore, for the above noted deficiencies, we cannot sustain the rejection of independent claim 1 and its dependent claims 2-12. For the same reasons, we cannot sustain the rejection of independent claim 13 and its corresponding dependent claims 14-24 and independent claim 25.

CONCLUSION

To summarize, we have reversed the rejection of claims 1-25 under 35 U.S.C. § 103(a).

REVERSED

Appeal 2007-2696
Application 09/870,621

rwk

DAFFER MCDANIEL LLP
P.O. BOX 684908
AUSTIN, TX 78768

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SCOTT J. BROUSSARD

Appeal 2008-0098
Application 09/870,622
Technology Center 2100

Decided: March 31, 2008

Before JAMES D. THOMAS, JOSEPH L. DIXON, and
LANCE LEONARD BARRY, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-17. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

BACKGROUND

Appellant's invention relates to a system and method for encapsulating software components in an application program interface using a proxy object. (Spec. 1). More specifically, the presently invention overcomes the difficulties traditionally involved in migrating legacy applications from AWT to Swing by providing a functional extension of Swing - referred to herein as "AWTSwing" - which allows Swing components to be substituted for existing AWT components. The substitution of components enables the original AWT object to be redrawn or otherwise graphically displayed in a manner, which is independent from the operating system, (Specification - page 24, line 15 to line 29). (Br. 3). An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A system for graphical display of an object created by an application program running under an operating system, comprising:

a graphics resource component adapted to display the object independently of the operating system;

a proxy component, which associates the object with the graphics resource component and invokes methods of the graphics resource component to display the object; and

a peer component, adapted to receive events pertaining to the object and route the events to the proxy component.

PRIOR ART

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

The Swing Connection, 2/98, Sun Microsystems, Volume 3, No.4, Swing Version 1.0 Introducing Swing, pages 1-7, (IS-SUN)

Mixing Heavy and Light Components, pages 1-13, (M-SUN)

REJECTIONS

Claims 1-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over IS-SUN and M-SUN.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and Appellant's regarding the above-noted rejection, we make reference to the Examiner's Answer (mailed January 29, 2007) for the reasoning in support of the rejections, and to Appellant's Brief (filed November 7, 2006) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to Appellant's Specification and claims, to the applied prior art references, and to the respective positions articulated by Appellant and the Examiner. As a consequence of our review, we make the determinations that follow.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). “[T]he Examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore, “‘there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007)(quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

In the combination of IS-SUN and M-SUN, we find no teachings of peer and proxies being used in combination as set forth in the language of independent claim 1. Furthermore, even if the combination of M-SUN and IS-SUN would have been proper, we do not find that the combination of M-SUN and IS-SUN teaches or fairly suggests the invention as recited in independent claim 1.

From our review of the Examiner’s rejection, we find the Examiner’s rejection to be based on unreasonable claim terminology interpretation as similar terminology is used in the references. Moreover, we do not find

clear support for the Examiner's conclusions from the express teachings of M-SUN and IS-SUN. Additionally, we find that the teachings of M-SUN clearly suggestive not using the combination of teachings as asserted by the Examiner.

Appellant argues that:

The presently claimed case provides a solution to the above-mentioned problem by creating a proxy component, which is not included within the existing classes of software components currently belonging to the Swing application program interface (API). The presently claimed proxy component enables Swing components to be successfully incorporated within AWT-based application programs by associating existing heavyweight (AWT) objects with lightweight (Swing) graphics resource components. This enables the proxy component to invoke the methods of the lightweight graphics resource components for displaying the objects independently from the operating system. The presently claimed peer component differs from typical Swing peer components by routing events intended for the existing heavyweight object to the presently claimed proxy component. See, Specification, page 24, line 8 - page 29, line 10.

(Br. 8). We agree with Appellant.

Appellant further argues that

However, a "Swing class" cannot be considered equivalent to a "proxy component" as suggested by the Examiner, since a "Swing class" merely defines the properties and methods (e.g., shape, color, size, location on screen, behavior, etc.) of a collection of Swing objects, whereas a "proxy component" actually functions to associate an object (e.g., a button displayed in a GUI) with a graphics resource component (e.g., JButton 48) and to invoke the methods of the graphics resource component (e.g., run the program code contained within JButton 48) for displaying the object. A "Swing class," in

itself, does not and cannot function to associate an object with a graphics resource component, invoke the methods of the graphics resource component, or display the object. Therefore, the mere mention of Swing classes within M-SUN does not provide teaching or suggestion for the proxy component recited in present claims 1, 9, and 17.

(Br. 9). We agree with Appellant.

Appellant further argues that:

Furthermore, though a "peer component" may be an "ancestor" of some other object, merely stating so provides no evidence of the peer component being adapted to receive events pertaining to the object and to route the events to a proxy component. Since M-SUN fails to provide teaching for a "proxy component", any peer components that may be described by M-SUN cannot be configured to route events to a non-existent proxy component. As such, M-SUN also fails to provide teaching or suggestion for the peer component recited in present claims 1, 9, and 17.

(Br. 10). We agree with Appellant.

Appellant argues that the Examiner's interpretation of the term "proxy" to mean merely a "substitute" to be unreasonable and does not address the merits of the claim limitations in the context as recited in independent claim 1. (Br. 10-11). We agree with Appellant and find that the Examiner is dissecting the claim limitations rather than evaluating the claim as a whole.

Since we find that the Examiner has not shown that the combination of M-SUN and IS-SUN would have taught or fairly suggested the invention as recited in independent claim 1, we cannot sustain the rejection of

independent claim 1 and its respective dependent claims. We find similar limitation in independent claims 9 and 17, and we cannot sustain the rejection of independent claims 9 and 17 and their respective dependent claims.

Moreover, with respect to dependent claims 7, 8, 15, and 16, Appellant argues that none of the cited prior art teaches or suggests that, when the object is part of a layout, the association of the object with the graphics resource component can be used to establish a parent-child relationship between the layout and the graphics resource component, which allows the graphics resource component to draw a (lightweight) object over an existing image of the (heavyweight) object originally drawn with the aid of the windowing system of the operating system. (Br. 13). We agree with Appellant and find that the Examiner seems to have viewed the claimed relationships in the reverse order than is specifically recited in the language of the dependent claims. Therefore, we cannot sustain the rejection of dependent claims 7, 8, 15, and 16 for this additional reason.

CONCLUSION

To summarize, we have reversed the rejection of claims 1-17 under 35 U.S.C. § 103(a).

REVERSED

Appeal 2008-0098
Application 09/870,622

pgc

DAFFER MCDANIEL LLP
P.O. BOX 684908
AUSTIN, TX 78768

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SCOTT J. BROUSSARD

Appeal 2008-0463
Application 09/870,624
Technology Center 2100

Decided: March 31, 2008

Before JAMES D. THOMAS, JOSEPH L. DIXON, and
LANCE LEONARD BARRY, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

BACKGROUND

Appellant's invention relates to a system and method for reducing memory use associated with the graphical representation of a list control. The present invention remedies select situations in the Swing interface which remedies situations in the Abstract Windowing Toolkit of Java. Appellant's claimed subject matter includes a display system (reference number 10) having a display (reference number 16), a graphical user interface (GUI), and a processor (reference number 12). (Spec. p. 11, ll. 28-30; FIG. 1). The processor is coupled between the display and the graphical user interface and is adapted to operate from a windows-based operating system (OS) for executing a software component (API) during runtime of an application program (APP). (Spec. p. 12, ll. 1-3; FIGS. 1 and 2). The executed software component (reference numerals 72 and 74) generates a first image upon the display independent of code within the operating system during a first time and, during a second time, emulates code that, when executed by the processor, generates a second image upon the display dependent on code within the operating system. (Spec. p. 12, ll. 6-10; p. 27, l. 16 to p. 28, l. 16; FIG. 9). The generated first and second images are substantially identical (Spec. p. 13, ll. 7-8). (Corrected Supplemental Br. 2: Summary of the Claimed Invention). An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below:

1. A display system, comprising:

a display;

a graphical user interface;

a processor coupled between the display and the graphical user interface and adapted to operate from a windows-based operating system for executing a software component during runtime of an application program wherein the executed software component generates a first image upon time display independent of code within the operating system during a first time and, during a second time, emulates code that, when executed by the processor, generates a second image upon the display dependent on code within the operating system, and wherein the first and second images are substantially identical.

PRIOR ART

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

Nason	US 6,727,918 B1	Apr. 27, 2004
Fowler, Mixing heavy and light components, 2/98, Vol. 3, No 4, all.		

REJECTIONS

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nason in view of Fowler.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and Appellant regarding the above-noted rejection, we make reference to the Examiner's Answer (mailed March 7, 2006) for the reasoning in support of the rejections, and to Appellant's Brief (filed April 20, 2006) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to Appellant's Specification and claims, to the applied prior art references, and to the respective positions articulated by Appellant and the Examiner. As a consequence of our review, we make the determinations that follow.

35 U.S.C. § 103

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). "[T]he Examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability." *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore, "'there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness' . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR Int'l Co. v. Teleflex Inc.*, 127

S. Ct. 1727, 1741 (2007)(quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

At the outset, we note that the scope of independent claims 1, 10, and 18 vary with their characterization of the first interface and the second interface with respect to which is dependent and independent upon the operating system. Furthermore, independent claims 1 and 10 recite different times that code is executed and that second code when executed by the processor emulates behavior of the other of the two interfaces while independent claim 18 does not recite the limitation relating code, but alternatively recites that the second image is adapted to overwrite the first image upon a display screen during a second time.

With respect to independent claim 1, we note that independent claim 1 which recites:

executing a software component during runtime of an application program wherein the executed software component generates a first image upon the display independent of code within the operating system during a first time and, during a second time, emulates code that, when executed by the processor, generates a second image upon the display dependent on code within the operating system, and wherein the first and second images are substantially identical.

We agree with the Examiner's rejection of independent claim 1 wherein the Examiner relies upon the teachings of Nason to teach and fairly suggest the use of two separate GUIs. Additionally, we find that while the

images from the GUIs may be on the screen at the same time and coexist, these images are not necessarily generated on the display simultaneously. Therefore, we find that it would have been obvious to one of ordinary skill in the art at the time of the invention that first and second images from the GUIs are generated sequentially or at dissimilar times. (Ans. 3-4 and 10-13). Therefore, we do not find Appellant's arguments with respect to the similar time or coexisting images to be persuasive. (Br. 5-7). Additionally, Appellant argues that the system of Nason displays substantially different images at the same time. Here, we do not find the argument to different images or the placement of an image on the GUI to be persuasive since we do not find any express limitations as to the image or its layout in the language of independent claim 1. We find the language of independent claim 1 to be broad enough to merely include a singular image that is similar yet in a different physical location on the screen and Nason teaches and fairly suggests parallel GUIs from operating system dependent and operating system independent code. We find that Nason teaches the use of two images that may be substantially similar from dependent operating system code and independent operating system code.

Appellant argues that Nason cannot be modified to include the limitations of independent claim 1, since Nason fails to even suggest the desirability of doing so. (Br. 7). Appellant argues that there are three examples where Nason fails to suggest the desirability for the three scenarios. (Br. 7). We do not find the argued scenarios persuasive wherein the first and second scenarios are directed to specific images not recited in

independent claim 1. Therefore, these arguments are not persuasive. With respect to the third scenario, we have addressed it above, and we do not find it persuasive of error.

Appellant argues that the Examiner's conclusion that lightweight and heavyweight components looks substantially identical cannot be surmised from the teachings actually provided by Fowler. (Br. 8-9). We disagree with Appellant since we do not find any express limitations in the language of independent claim 1 which would limit the claimed invention to the specific situations discussed in Fowler where problems between lightweight and heavyweight components may exist. While we do agree that Fowler identifies situations of concern and provides warnings with respect to those problems, we agree with the Examiner that there are situations where an image generated by a heavyweight component would be strikingly similar to an image generated by a lightweight component. Therefore, we agree with the Examiner's combination of Nason and Fowler. While there are recognized circumstances or situations where they may not be similar due to the limitations of each component, we find no express limitations in the language of independent claim 1. Therefore, Appellant's argument is not persuasive.

With respect to Appellant's arguments concerning mixing lightweight and heavyweight components and that Fowler teaches away from mixing the two types of components, we disagree with Appellant's sweeping conclusion. (Br. 10). Rather, we find that Fowler suggests to be careful in

the use of the two types of components together. Therefore, we do not find Appellant's argument persuasive.

With respect to Appellant's argument concerning the Examiner's additional reliance upon the teachings of Nason regarding displaying the same or similar image with a first and second application program interface (Br. 10-11), we find no express limitation as to the extent or type of the images, as discussed above. Therefore, we do not find Appellant's argument persuasive of error in the Examiner's initial showing, and we will sustain the rejection of independent claim 1 and its dependent claims 2-9.

With respect to independent claim 10, the Examiner essentially repeats the rejection set forth with respect to independent claim 1 in the statement of the rejection. In response to Appellant's argument concerning the specific steps recited in independent claim 10, the Examiner maintains that the determination by the controller in Nason determines where to send the command for display. (Ans. 20). The Examiner maintains that when using two different APIs, the original interface will be replaced as the destination interface by a different interface for processing for the display. The Examiner maintains that the second image that is to be "re-displayed" is nothing more than another image that can be displayed in conjunction with the first image, but that it was generated using a different API. (Ans. 20-21). We disagree with the Examiner's interpretation of the selection of either interface for the display as teaching or suggesting replacing the interface and re-running the application program and re-display of a second image. We cannot agree with the Examiner's reliance upon the second application

program interface as meeting the specific sequence of steps as recited in independent claim 10. Therefore, we do not find that the Examiner has set forth the requisite initial showing of obviousness of independent claim 10 nor has the Examiner set forth a convincing line of reasoning based upon the teachings of Nason and Fowler to show obviousness of independent claim 10. Therefore, we cannot sustain the rejection of independent claim 10 and its respective dependent claims 11-17.

With respect to independent claim 18, Appellant argues that Nason fails to disclose that during a second time, the second image which is operating system independent, is adapted to overwrite the first image, which is operating system dependent, upon a display screen. While Appellant acknowledges that Nason does teach one image overwriting another when a secondary image overlaps or overwrites a portion of the desktop, Nason does not recognize, teach or fairly suggest that the native and secondary GUIs could produce substantially identical images. (Br. 16-17). We agree with Appellant that the teachings of Nason are very general and not specific to certain implementations for various identical images. With that said, we agree with the Examiner that Nason does teach overlapping or overwriting a portion of a desktop which would be an image as recited in independent claim 18. Furthermore, the teachings of Fowler do teach and suggest the use of both heavyweight and lightweight components and some of the respective limitations thereto. Yet, we find no express limitations in the language of independent claim 18 which would limit the claimed invention beyond the combination as taught and fairly suggested by Nason and Fowler.

Therefore, we do not find Appellant's argument to be persuasive of error in the Examiner's initial showing.

Appellant argues that Fowler fails to teach that an operating system independent image could be used to overwrite an operating system-dependent image upon a display screen. (Br. 18). We disagree with Appellant since the teachings of Fowler concern the z-order of the two components with respect to labels. Here, the claim language does not recite "labels," but rather merely images. Therefore, we do not find Appellant's argument persuasive of error in the Examiner's initial showing, and we will sustain the rejection of independent claim 18 and its respective dependent claims 19 and 20.

CONCLUSION

To summarize, we have sustained the rejection of claims 1-9 and 18-20 under 35 U.S.C. § 103(a), and we have reversed the rejection of claims 10-17 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

Appeal 2008-0463
Application 09/870,624

pgc

DAFFER MCDANIEL LLP
P.O. BOX 684908
AUSTIN, TX 78768